XII-189 (Jail) C. J. P. R./I-91 CRA 1600 194 (2) 26/7

APPEAL OF PRISONER

CF0000057755

No. 575 Name तेलकुंवारी बाई 23/11/94

Father's name Husband सुखदेव वैष्णव

Residence रेस्ट हाऊस के पीछे पत्थलगांव Age ३० वर्ष ST NO 169/93

Sentenced to रायगढ़ आजीवन कारावास एवं १ वर्ष सा० on 15 (23-9-94)

Under Section ३०२, ३१८ I.P.C. by मुख्य न्यायिक दण्डाधिकारी रायगढ़

(राजीव शर्मा)

It is explained to the prisoner that if he states he wishes to be represented by a legal practitioner the appellate Court will not proceed with the case for seven days unless the legal practitioner appears earlier. If the legal practitioner does not appear within seven days he may not heard at all. if the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement ↓

2 Date on which copy received ↓

3 Date on which Appeal sent ↓

4 Whether the prisoner wishes to be represented or not. ↓

No. 575 Name तेलकुंवारी बाई

Confined in जिला Jail रायगढ़

No. 1520 Dated 13-9-94 199

Forwarded to the मुख्य न्यायिक दण्डाधिकारी रायगढ़

together with a copy of judgement or order passed in the case for favour of transmission to the proper Appellate court.

संलग्न – निर्णय पत्रावली

Superintendent

Jail

High Court of Madhya Pradesh
JABALPUR
6 DEC 1994
Reg. No. 176 Office
Receipt Clerk

Date of receipt in

Date of receipt of record to accompany the Memo of Appeal to the Appellate court

No. Q/CJM Rajgarh Dated 22/11/94 199

Forwarded to the Submitted to Sessions Judge Raigarh (Comp)

Chief Judicial Magistrate

Date of receipt in Appellate court

[P. T. O.

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(13)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A.No. 1600/94 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: HON'BLE SHRI L.C.BHADOO & HON'BLE SHRI DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO.1600 of 1994

Appellant : Telkunwari Bai

Vs.

Respondent : State of Madhya Pradesh

Shri S.L.Bajaj, learned counsel for the appellant.

Shri U.N.S.Deo, learned Additional Public Prosecutor with Shri Akhil Mishra, learned Panel Lawyer for the respondent/State.

ORAL JUDGMENT
(07.02.2006)

L.C.Bhadoo, J

By this appeal under Section 374(2) of the Code of Criminal Procedure accused/appellant Telkunwari Bai has questioned the legality of judgment of conviction and order of sentence dated 15.09.94 passed by the Second Additional Sessions Judge, Raigarh in S.T. No. 189/93 whereby the learned Additional Sessions Judge after holding the accused/appellant guilty for commission of murder of her newly born child convicted her under sections 302 and 318 of the IPC and sentenced her to undergo imprisonment for life and one year RI respectively on both the counts.

2. Case of the prosecution, in brief is that on 16.03.93 Kotar Jamal Ram lodged a report in the police station Pathalgaon that the placenta of a woman regarding giving birth of a child was lying behind the Rest House,

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आदेश पत्रक

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	the accused Telkunwari Bai is residing all alone and she was pregnant therefore, it is suspected that she has given birth to a child. On receiving this report, the S.H.O. of police station Pathalgaon started the investigation and the dead body of newly born female baby was recovered in a plastic bag from bus stand, Pathalgaon. The medical examination of the accused was conducted in which the doctor opined that the accused has given birth to a child. P.W.-6 Dr. Kailash Dutt Dubey conducted the post mortem on the body of the newly born baby and opined that the baby was born alive and she died on account of asphyxia due to pressing of the neck. After investigation the charge sheet was filed in the Court of Chief Judicial Magistrate, Raigarh for the commission of the offence under Section 302 and 318 of the IPC against the accused/appellant and the learned Chief Judicial Magistrate in turn committed the case to Sessions Judge, Raigarh from where the learned Second Additional Sessions Judge, Raigarh received the case on transfer for trial.	
	3. The prosecution in order to establish the charges against the accused/appellant examined eight witnesses. Statement of the accused/appellant was also recorded under Section 313 of the Cr.P.C. in which she denied most of the prosecution evidence appearing against her and in reply to question No.12 that she has delivered a child within a week thereto, she replied that she delivered a child eight to ten days before. The accused also examined one defence witness D.W.-1 Madhu Sai.	
	4. After hearing the arguments of the Additional Public Prosecutor and counsel for the accused/appellant, learned Additional Sessions Judge	

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

convicted and sentenced the accused/appellant as mentioned in paragraph one of this judgment.

5. We have heard Shri S.L.Bajaj, learned counsel for the accused/appellant and Shri U.N.S.Deo with Shri Akhil Mishra on behalf of the State.

6. In order to connect the accused/appellant with the crime in question there is no direct evidence and the case rests on circumstantial evidence and in order to convicct the accused/appellant on the basis of circumstantial evidence the prosecution has to prove the offence as per the settled principles laid down by the Hon'ble Apex Court in the case of ***Nissar Ahmed Vs. State of Bihar*** reported in ***AIR 2001 Supreme Court 2416*** wherein it is held that in a case based on circumstantial evidence, before the Court can record conviction, it must satisfy itself that circumstances from which an inference of guilt could be drawn has been established by unimpeachable evidence led by the prosecution and that all the circumstances if put together are not only of a conclusive nature but also complete the chain so fully as to unerringly point only to the guilt of the accused and are not capable of any explanation which is not consistent with the hypothesis of the guilt of the accused.

7. Learned counsel for the accused/appellant argued that there is nothing on record to show that the female child which was recovered from the bus stand, Pathalgaon was the child of the accused/appellant. Even the body was not found at the instance of the accused/appellant therefore, there is nothing on record to connect the accused/appellant with the death of the child which was found at the bus stand, Pathalgaon.

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मामला क्रमांक Cr.A. No. 1600/94 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —4—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
8.	On the other hand, Shri U.N.S. Deo learned Additional Public prosecutor supported the judgment of the trial Court.	
9.	As far as the giving birth to a child by the accused/appellant is concerned,it is established by the evidence of P.W.-3 Dr. N.Athaley who has stated that she examined the accused on 17.03.93 and found that her breast was enlarged and milk was coming out on express of the breast, uterus was of twenty four weeks size as the vagina was surrounded by one degree. The lochiya was stinking and was of red colour and the accused/appellant delivered a child within one week of the examination. Even the accused/appellant herself has admitted in reply to the question No.12 in her statement under Section 313 of the Cr.P.C. that she gave birth to a child eight to ten days prior to her examination. Now the question remains, whether the child which was found at the bus stand, Pathalgaon was of the accused/appellant. In this connection no blood test was conducted in order to connect the child with the accused/appellant and even the body of the child was not recovered from the house of the accused and there is nobody's evidence who saw the accused/appellant placing the child at the bus stand, Pathalgaon. The only evidence adduced by the prosecution is the evidence of Investigating Officer P.W.-8, Mukesh Khare and P.W.2 Tansukh Lal.. P.W.-2 Tansukh Lal has stated that about nearly one year back at about 11.00 -12.00 during the day, the police took into possession the body of a newly born child from near a tree at the bus stand, Pathalgaon. The police recovered the body after bringing the accused/appellant at the place and prepared panchnama of the body P-4. In the cross examination he stated that he had no knowledge that to whom	

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	that child was belonging. He heard that the body of a female child was lying.	
10.	P.W.-8 Mukesh Khare in paragraph four of his evidence has stated that on 16.03.93 Telkunwari Bai was having a plastic bag in which body of newly born female child was there and the same was taken into possession under P-2. In the seizure memo P-2 it has been mentioned that one plastic bag was recovered from the accused in which dead body of the child was found and P.W.-1 Jamal Ram has also stated that the SHO took into possession under P-2 one bag from the accused from which the dead body of the child was recovered where as P.W.-2 Tansukh Lal has stated that the dead body was recovered from the bus stand in a bag under P-4. P-4 is the naksha panchnama in which it has been mentioned that there was a polythene bag in which the body of newly born baby was found and same was lying on the bus stand near the trolley of Tansukh Lal, therefore, evidence of P.W.-2 Tansukh Lal and P.W.-1 Jamal Ram contradict each other. On the one Hand P.W.-1 Jamal Ram and P.W.8 Mukesh Khare have stated that the polythene bag was recovered from the accused under P-2 whereas P-4 Naksha Panchnama prepared by the Investigating Officer mentions that the bag was lying at the bus stand near the trolley of Tansukh lal and to that effect P.W.-2 has stated.	
11.	In view of the contradictory evidence we are of the considered opinion that the prosecution has not been able to establish that the bag containing the body of newly born baby was in the first instance recovered from the accused/appellant and there is no evidence that who kept that bag at the bus stand near the tree and there is no other evidence connecting the	

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —6—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	accused as mentioned earlier that the child which was taken into possession from the bus stand was of the accused/appellant.	
12.	Now coming to the question whether the child died on account of asphyxia after being born alive, to this effect the evidence of Dr. Kailash Dutt Dubey, P.W.-6 is relevant who has stated that there was contusion over the neck and there was a mark of pressure applied on the neck in the size of 1/4 ", there was no other injury and blood was also coming out from the nostrils. He has further stated that he conducted the floating test of the lungs which was found positive and cricoid cartilage was found ruptured and clots of blood were present therefore, in view of the above evidence it is established that the child died on account of the pressing of neck but as has been mentioned earlier that the prosecution has not been able to establish by clinching and legally admissible circumstantial evidence that the child in question was delivered by the accused/appellant and she only left the child near the tree at the bus stand and further there is no evidence that the accused/appellant strangulated the child. Therefore, in view of above, the findings of the trial Court convicting the accused/appellant under Section 302 of the IPC cannot be sustained.	
13.	Consequently in view of the above discussion, it is clear that there is no evidence to show that the accused secretly buried or otherwise disposed of the dead body of the child in order to conceal her birth. Therefore the offence under Section 318 of the IPC is also not established against the accused/appellant and the conviction under Section 318 of the IPC recorded by the trial Court is not sustainable.	

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14.	In the result the appeal of the accused/appellant succeeds and the same is allowed. The accused/appellant is acquitted of the charge under Sections 302 and 318 of the IPC and she be set at liberty forthwith if not required in any other case. **Sd/-** **L.C. Bhadoo** **Judge**	**Sd/-** **Dhirendra Mishra** **Judge**